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July 29, 2020

Via Email<sup>1</sup>

The Honorable Sarah Netburn  
United States Magistrate Judge  
Thurgood Marshall Courthouse  
40 Foley Square, Room 430  
New York, NY 10007

Re: *Rich v. Fox News Network LLC et al.*, No. 18-cv-2223

Dear Judge Netburn:

This letter responds to Defendant Butowsky's July 22, 2020, letter objecting to Plaintiffs' apprising the Court of newly discovered evidence confirming this Court's jurisdiction over Butowsky. There is nothing improper (and Butowsky cites no law to the contrary) about Plaintiffs notifying the Court of evidence bolstering jurisdiction. Although Butowsky has not produced a single document in response to Plaintiffs' document requests, the evidence Plaintiffs have obtained through third parties and Fox conclusively refutes Butowsky's motion to dismiss based on lack of jurisdiction. Plaintiffs respectfully request that the Court deny the motion and end Butowsky's use of the motion as an excuse to delay participation in this lawsuit.

Even where "the parties have conducted extensive discovery regarding the defendant's contacts with the forum state, but no evidentiary hearing has been held," a plaintiff need only make a "prima facie showing necessary to defeat a jurisdiction testing motion." *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 163 (2d Cir. 2010). This showing can be made through

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<sup>1</sup> Plaintiffs file this letter pursuant to the Court's Rule I.A because documents referenced are designated confidential by Defendants. Plaintiffs disagree that these documents warrant confidential treatment and will file this letter and exhibits publicly pursuant to the Court's Order at Dkt. 168 at the earliest opportunity.

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“affidavits and supporting materials[.]” *Golden Archer Investments, LLC v. Skynet Fin. Sys.*, 2012 WL 123989, at \*3 (S.D.N.Y. Jan. 3, 2012).

Butowsky argued that the Court lacked personal jurisdiction over him because “it is not alleged that Mr. Butowsky ever set foot in New York, let alone in connection with the facts of this case.” Butowsky Mot. at 1 (Dkt. 53). That is wrong both legally and factually.

New York’s long-arm statute allows a “single act ... to establish that a defendant transacted business’ in New York within the meaning of [N.Y. C.P.L.R.] § 302(a)(1).” *Golden Archer Investments, LLC*, 2012 WL 123989, at \*4. Even entirely “remote” projections into New York may establish jurisdiction where an entity “projected itself into New York ‘to engage in a sustained and substantial transaction of business.’” *Id.* (finding jurisdiction where defendant never visited New York in connection with the contract but its communications “allow[ed] the defendant to participate in the transaction itself.”).

Plaintiffs alleged that Butowsky was a “frequent contributor on Fox News and Fox Business News **in New York**,” and wrote to “Fox News producers and on-air talent in New York” that he was “the one who’s been putting this [story about Seth Rich] together.” Compl. ¶¶ 12, 82 (Dkt. 1, 99). Butowsky’s purpose in reaching into New York was to “promote the sham story.” *Id.* ¶ 139. He acted so that Fox would publish and promoted the article in New York. That is sufficient.

But the evidence elicited in discovery lays to rest and argument that there is no jurisdiction over Butowsky in this Court. It confirms that Butowsky projected himself into and traveled repeatedly to New York to launch, bolster, and promote a story about Seth Rich, which was made possible by Defendants’ exploitation of Joel and Mary Rich. Here is what the (still incomplete) evidence shows:

- **May 15, 2017:** The Zimmerman News Article, which Butowsky says he was “putting ... together” was “**sent to New York** to be published.” Wheeler0000493 (Dkt. 111-1). Butowsky urged those in New York to discuss it on Fox air in New York.
- **May 21, 2017:** Television personality Soledad O’Brien emails Butowsky, “Want to ask you about the Seth Rich case. Been seeing your name in stories about it.” Ex. A (Butowsky0001497). Butowsky responds, “Do you want to **meet in New York** on Tuesday? **I have and know everything....**” *Id.*
- **May 22, 2017:** As the story unraveled, Butowsky traveled “**to New York**” to give Fox’s editors the “complete picture,” including sharing his texts with “the Rich family and Rod Wheeler.” FoxNews0001862 (Ex. 1 to May 6, 2020 letter).
- **May 23, 2017:** On the day Fox retracts the article, Butowsky continues his campaign in New York to bolster and promote the narrative. He writes to Fox contributor Andrew Napolitano: “I have a lot of information that is not known right now in my possession about Seth Rich. I will be in the [Fox New York] building this morning are you available for me to share this with you.” FoxNews0000200 (Dkt. 111-2). Far from “ignor[ing]” Butowsky, as Fox claimed in a letter dated May

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11, 2020, Fox's Napolitano responded, "Yes. I will meet you in the lobby at 8:30."  
*Id.*

- **May 23, 2017:** The same day, Butowsky emails Sean Hannity in New York: "I'm at the center of the Seth Rich Wikileaks uncovering... Would you like to talk ... or do you want me to **swing by your radio show** in my knee and give it to you before you go on." Ex. B (Butowsky0003077).
- **June 7, 2017:** Butowsky texts Rod Wheeler, "I am flying up to confront Aaron Rich on Friday. **New Yorkers** don't let people screw with them without a good fight." Ex. C (Wheeler0000711).
- **June 26, 2017:** Butowsky writes to Ken LaCorte, a friend of Zimmerman's, that Wheeler "now says that the quote in controversy came from me and that Fox, Malia and I set him up. Do you have the Fox 5 link you referenced? I am on a **plane to NYC right now.**" Butowsky0001600 (Ex. C to July 10, 2020 letter).
- **June 26, 2017:** Suzanne Scott, now CEO of Fox News, received an email that another Fox employee "saw Ed Butowsky walking around on his phone by the elevator bank." Scott responds, "Please quietly spread the word that we should stay away from him." Ex. D (FoxNews0034101)
- **June 27, 2017:** Butowsky emails Zimmerman's editors Greg Wilson and Refet Kaplan, "I have some information that I know will be very helpful. I am on the 3<sup>rd</sup> floor [of Fox's New York office]... I thought it best not to appear on your floor." FoxNews0001076 (Ex. 2 to May 6 letter).
- **August 22, 2017:** Butowsky emails Chris Cuomo at CNN accusing Cuomo of going with a "huge made up fake story by Rod Wheeler" and asking to be "back on" the show. "**I am in nyc aug 28 to sept 1...**" Butowsky0000981 (Dkt. 111-4).
- **August 23, 2017:** Butowsky emails Bloomberg journalists calling himself a "man who simply offered to pay a bill for **a family** to find out who murdered their son" and offering to "**meet Monday morning ...in nyc**" so that he can "lay out all the facts." Ex. E (Butowsky0003555).
- **November 13, 2017:** Butowsky emails Zimmerman's editor Refet Kaplan: "**I am in nyc Weds and Thursday** and wanted to discuss a few things ...." FoxNews0000406 (Dkt. 111-3).
- **August 1, 2018:** Butowsky and Fox News execute a settlement agreement arising out of "**Joel and Mary Rich v. Fox News Network LLC et al., 18-cv-02223**), which: (1) grants Butowsky a meeting with Fox News in New York; (2) provides that New York law governs; and (3) provides for venue in New York. FoxNews0032547 (Ex. A to July 10 letter). Butowsky's claim that this agreement relates to a "separate matter" is false – it involves this lawsuit and another arising from Butowsky's exploitation of the Riches. It confirms that New York is the epicenter of Fox and Butowsky's relationship arising from this case.

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- **October 24, 2018:** Butowsky emails Chris Cuomo at CNN an article entitled “DNC Emails – A Seth Attack Not a Russia Hack” and proposes, “Perhaps we should **meet up the next time I am in nyc?**” Butowsky0000306 (Dkt. 111-5).

In reversing the dismissal of the Riches’ claims of intentional infliction of emotional distress and tortious interference, the Second Circuit found relevant that “**at least up until the filing of the Riches’ complaint**, Butowsky ... kept exploiting the Riches’ name to **fuel the conspiracy theory on Twitter and other news outlets.**” *Rich v. Fox News Network, LLC*, 939 F.3d 112, 120 (2d Cir. 2019). The Court described the harm Joel and Mary Rich suffered “[a]s a **result of this scheme,**” *id.* – which included the many instances of Butowsky inserting himself into, and physically traveling to New York to “fuel the conspiracy.”

This case is not a close call. Butowsky’s May 15, 2017 email reaching into New York to get those in New York to promote the Seth Rich story, creates a “substantial connection” between Butowsky’s contacts with New York and Plaintiffs’ claims. *See Commodity Futures Trading Comm’n v. TFS-ICAP, LLC*, 415 F. Supp. 3d 371, 386 (S.D.N.Y. 2019) (“[C]ontacts with individuals in a certain forum can certainly translate to contact with the forum itself if, as here, the defendant is taking action that affects the forum through his contacts with the individuals.”); *see also* Dkt. 56 at 37-38. Butowsky’s now-discovered conduct on May 21-23, 2017– traveling to New York to bolster the story with Fox editors Wilson and Kaplan; with Fox on-air personalities Hannity and Napolitano; and with other news outlets– **standing alone** is sufficient *in forum* conduct to eliminate any doubt. Butowsky’s sustained efforts to publish and promote the Seth Rich narrative in New York after exploiting the Riches, and his settlement with Fox News in New York make clear that “exercise of personal jurisdiction over [Butowsky] comports with traditional notions of fair play and substantial justice.” *Id.*

This Court should have no hesitation about exercising jurisdiction over Butowsky. Plaintiffs respectfully submit that Butowsky’s motion should be denied.

Respectfully,



Elisha Barron  
*Counsel for Joel & Mary Rich*

EXHIBIT A  
CONFIDENTIAL

## Re: Hey it's Soledad

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**From:** <ebutowsky@gmail.com>

Sun, May 21, 2017 at 8:57 PM CDT (GMT-05:00)

**To:** Soledad O'Brien <soledad@starfishmediagroup.com>

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Do you want to meet in New York on Tuesday? I have and know everything but don't tell anyone

> On May 21, 2017, at 7:51 PM, Soledad O'Brien <soledad@starfishmediagroup.com> wrote:

>

> Want to ask you about the Seth Rich case. Been seeing your name in stories about it. Can you discuss?

>

> Sent from Soledad O'Brien

> Starfish Media Group

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## EXHIBIT B

HIGHLY CONFIDENTIAL

**Seth Rich / Ed Butowsky 972.897.0197**

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**From:** <ebutowsky@gmail.com>  
**To:** Sean Hannity <hannity@aol.com>

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Tue, May 23, 2017 at 6:43 AM CDT (GMT-05:00)

As you probably have read, I'm at the center of the Seth Rich WikiLeaks uncovering .  
I have personally collected where the computer is who is leading the cover up how Donna Brazil is involved how the mayor of Washington is involved and how close Hyer up from there. Would you like to talk or would like me to bring or do you want me to swing by your radio show in my knee and give it to you before you go on.

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## EXHIBIT C

Yes

Can I call you?

If not, that's ok

Just want to run something by you

2017-06-03 08:39 AM

Yes

2017-06-07 08:43 PM

I am flying up to confront Aaron Rich on Friday.

New Yorkers don't let people screw with them  
without a good fight.

2017-06-08 09:00 AM

Here's another thought since you're ignoring me  
maybe this will get you to respond. Let's use  
your updated notes to help people on  
background look into things. And agree that  
your notes Will not be distributed publicly.

## EXHIBIT D

CONFIDENTIAL

**From:** Lauren.Petterson@FOXNEWS.COM [Lauren.Petterson@FOXNEWS.COM]  
**Sent:** 6/26/2017 7:40:33 PM  
**To:** Scott, Suzanne [Suzanne.Scott@foxnews.com]  
**Subject:** Re: heads up

Ok

On Jun 26, 2017, at 3:15 PM, Scott, Suzanne <[Suzanne.Scott@foxnews.com](mailto:Suzanne.Scott@foxnews.com)> wrote:

Please quietly spread the word that we should stay away from him.

Begin forwarded message:

**From:** "Flatley, Catie" <[Catie.flatley@FOXNEWS.COM](mailto:Catie.flatley@FOXNEWS.COM)>  
**Date:** June 26, 2017 at 3:11:56 PM EDT  
**To:** "Scott, Suzanne" <[Suzanne.Scott@foxnews.com](mailto:Suzanne.Scott@foxnews.com)>  
**Subject:** FW: heads up

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**From:** Clarke (Brown), Megan  
**Sent:** Monday, June 26, 2017 3:10 PM  
**To:** Flatley, Catie; O'Donnell, Erin  
**Subject:** heads up

Might be aware already but JIC – saw Ed Butowsky walking around on his phone by the elevator bank

Megan H. Clarke  
VP, Booking /Talent Producer  
NY:212-301-3854 DC: 202-824-6554  
Cell: 917-821-9815  
[Megan.Clarke@foxnews.com](mailto:Megan.Clarke@foxnews.com)

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AMERICA has chosen....  
FOX NEWS is # 1 in ratings, # 1 with viewers.

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## EXHIBIT E

CONFIDENTIAL

**Fwd: the hit piece you are writing on an innocent victim....from ed butowsky 972.897.0197**

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**From:** <ebutowsky@gmail.com>  
**To:** Lauren Butowsky <laurenbutowsky@gmail.com>

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Wed, Aug 23, 2017 at 7:36 PM CDT (GMT-05:00)

Begin forwarded message:

**From:** ed butowsky <ebutowsky@gmail.com>  
**Date:** August 23, 2017 at 6:53:16 PM CDT  
**To:** <ryanvcris@bloomberg.net>, <elerson4@bloomberg.net>  
**Cc:** <rahapiro30@bloomberg.net>, <mbloomberg@bloomberg.net>, <lsecunda@bloomberg.net>, <pgrauer@bloomberg.net>  
**Subject:** the hit piece you are writing on an innocent victim....from ed butowsky 972.897.0197

Want to make sure you didn't miss this very newsworthy info( below ) related to the bogus fake lawsuit designed to pressure fox news into paying wigdor and wheeler money.

As you both know, I am very protective of my children/ my wife and I work very hard to take care of them and protecting them. So when I am lied about, a made up story about me goes international without any of you "reporters" doing any investigating about the lies a person like me because very uncomfortable with anyone trying to write another negative , demeaning article about me for no reason. Did you know because of false fake reporting by "reporters " or "theorists" a time count down appeared on the internet about when my sophomore son arrived back to Vanderbilt for the Fall. His death was called for because of fake false reporting whose goal was to hurt me. Both of you know that both ,wigdor and wheeler have already admitted that the lawsuit is not true.

So I view your desire to write another fake , false , mean spirited article about me as a direct shot at my children. Erick you are too young to understand and appreciate what I am saying. Bob, you should be ashamed of yourself.

How dare both of you attack a man who simply offered to pay a bill for a family to find out who murdered their son. What type of people are you.

If you were honest people ( Erick, you lost me when you told me your theory was that I made up Benghazi and Wikileaks in an effort to bring down the DNC. Yes I did tape it on tape a call but you are a young man so I will just hold on to it. ) I would give you text and emails that prove that Mr. rich told me the first time I spoke with him that he knew what his boys did but wanted to simply find out who murdered his son.

If you were honest journalists I would give you everything to support the truth but you have proven not to be. I remember when Bloomberg was the epitome of solid factual reporting.

But you both aren't. so I view both of you as people that want to endanger my life and my children. You can twist things in your minds anyway you want but I WILL ALWAYS REMEMBER WHAT YOU ARE DOING TO MY FAMILY AND THE FAMILIES OF THE HARDWORKING PEOPLE THAT WORK WITH ME.

Are you proud that your " reporting " is hurting a few single mothers with 2 children and 3 children respectively?

I point this out to you because I think you and others forget the damage you do to peoples lives for zero reason. I have copied a number of people on this and I will be visiting a few others next week in nyc. I will bring info with me that will show how wrong you both have been by targeting me.

I have the highest amount of respect for Bloomberg and always loved being on Pimm Fox's show and being on radio and in print. Perhaps, we can all meet in Mr.Bloomberg's office with him or some

of the other prestigious partners so I can lay out all the facts so you can write the greatest real stories with all the facts.

If you want to meet Monday morning , I will be available. I am in nyc mon thru weds night. I want people to know the truth but it is obvious to me you don't. Therefore if we meet , I insist an attorney be there from your in house team.

I just don't trust either of you to be honest. Sorry about that.

Btw, have you written the article discussing wigdor extortion play, how the entire lawsuit is a lie????

The following all took place the day before the story was published, Monday, May 15, 2017, and shows that Rod Wheeler possessed and approved the quotes contained in the article published by Malia Zimmerman and Fox News:

- **1:20 PM:** Malia Zimmerman sent Rod Wheeler an email with a draft of the article in the body of the email with the subject "small changes included – current draft." The draft contained the two precise quotes Rod Wheeler claims were wrongfully attributed to him:
  - "My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks," said Wheeler, who is also a Fox News contributor.



- . “My investigation shows someone within the DC government, Democratic National Committee or Clinton team, is blocking the murder investigation from going forward,” Wheeler said. “That is unfortunately (sic). Seth Rich’s murder is unsolved as a result of that.”
- . **2:16 PM (approx.):** Rod Wheeler sent Malia Zimmerman a series of “blurbs” concerning DNC’s interest in the investigation to potentially be incorporated into quotes for the story. Zimmerman responded “Ok this is great. Can I use as quotes too?” Later she wrote: “Thanks Rod. Got it.”
- . **3:59 PM:** Malia Zimmerman sent Rod Wheeler a copy of the article again, stating in the subject line “please read carefully.” The draft contained both of the precise quotes that Rod Wheeler now claims were wrongfully attributed to him.
- . **3:59 PM:** Malia Zimmerman sent Rod Wheeler a text message, stating, “Can you read the story now. Get back to me as soon as you can so I can turn it in. Thanks!” Wheeler responded, “Reading it now. Malia you can add that I do strongly believe that the answers to who murdered Seth sits on his computer on a shelf at the D. C. Police or FBI headquarters.” Zimmerman wrote, “Ok I’ll add it.”
- . **4:47 PM:** Malia Zimmerman sent Wheeler an email containing the final draft of the article, in the body of the email, with the subject “draft turned in.” The final draft quotes read:

- “My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,” said Wheeler, who was hired to investigate Rich’s murder. “I do believe that the answers to who murdered Seth Rich sits on his computer on a shelf at the DC police or FBI headquarters.”
- “My investigation shows someone within the DC government, Democratic National Committee or Clinton team, is blocking the murder investigation from going forward,” Wheeler said. “That is unfortunately (sic). Seth Rich’s murder is unsolved as a result of that.”

These exchanges show that Wheeler received three emails from Malia Zimmerman seeking his review and confirmation of the quotes he is now challenging, he responded to Malia’s requests for confirmation, and his only proposed change was to add language to one of the quotes (which Malia added verbatim). That’s the entirety of his lawsuit – there’s no substance. He’s using these baseless claims to tell a sensational story about our client and Fox News.

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## Attachments

- File 1.pdf
- File 2.pdf
- File 3.pdf
- iknowwhoisblocking[1].jpg
- IMG\_1597.PNG
- IMG\_1598.PNG
- IMG\_1599.PNG
- IMG\_1600.PNG
- Screen Shot 2017-08-04 at 8.50.26 AM.png
- Screen Shot 2017-08-04 at 8.50.42 AM.png
- Text Msg.pdf